IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Rajasthan Synthetic Industries Ltd. Jaipur & Anr. **VS.** **U.O.I. & Ors.**

D.B. CIVIL WRIT PETITION NO.2808/1992
under Article 226 & 227 of the Constitution of India.

Date of order : 1st Feb., 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P. VYAS

Mr. Rajendra Mehta for the petitioners
Mr. Ravi Bhansali for the respondents.

BY THE COURT:- (Per Hon'ble Mr. Rajesh Balia, J.)

Heard learned counsel for the parties.

The petitioners have filed revised classification list w.e.f. 1.6.1990 claiming that classification of HDPE/PP tapes fall under Chapter 39 sub-heading No.3923.90 of Central Excise Tariff Act, 1985 as articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics. However, the Excise Authorities have opined that as per correct classification HDPE/woven sacks fell under Chapter 63,

sub heading No.63.01 and 63.05 on the ground that sacks in question are manufactured out of HDPE/PP tapes exceeding 5 mm width whereas the sacks manufactured out of HDPE/PP articles manufactured not exceeding 5 mm of width are classified under chapter 54 sub-heading 5406.90. Likewise for other commodities namely HDPE/PP tapes, HDPE/PP fabrics and HDPE/woven sacks, the assessee claimed that under Chapter 33 of the Central Excise Act applies and products are classified under different sub-heads, the excise authorities claimed it to be classified under different heads of chapter 63. Further it is the case of the Revenue that since in respect of all the commodities falling under Chapter 63, no modvat credit is available, the modvat credit availed by the petitioner in respect of the aforesaid commodities may be recalled.

It is pointed out by the learned counsel for the parties that the issue has earlier been considered by the Division Bench of this Court in D.B. Civil Writ Petition No.3691/1989, Kandhari and Kandari Pvt. Ltd. Vs. Union of India decided on 16.1.2002 which related to the HDPE/PP tapes, HDPE/PP Fabrics not exceeding in width 5 mm and falling under Chapter 39 as per Revenue

whereas in the present case for the like reason on the basis of tapes used in manufacture of HDPE/PP commodities fall under Chapter 63, the controversy remains the same. In Kandhari and Kandari's case, the Court noticed that the claim of the assessee was founded on the decision of the Madhya Pradesh High Court in M/s Raj. Pack Well Ltd. Indore & Other Vs. Union of India and others (Miscellaneous Petition No.1205/88 decided on 7.11.1989) and a decision of the Karnataka High Court in Writ Petition No.9525 and other petitions of 1990, 1991 and 1992 decided on 23rd July, 1993.

The aforesaid decision held in favour of the assessee that the product in question fall under Chapter 39 and not under Chapter 54 of the Tariff. This Court had reached same conclusion relying on above two decisions.

The decision of the Madhya Pradesh High Court has since been affirmed by the Supreme Court, when it dismissed the appeal of the Revenue on 19.1.2000. The Excise Authorities have also during the pendency of the appeal before the Supreme Court had decided to classify the product in question under various entries

under Chapter 39 and not under other heads. During the pendency of the appeal, a circular dated 1.3.1992 was also issued by the Central Excise and Custom Board that the HDPE/PP Fabrics Tapes and sacks are also to be classified under chapter 39.

In view of the aforesaid decision rendered by the Madhya Pradesh High Court in M/s Raj. Pack Well Ltd's case as affirmed by the Supreme Court and applied to the case of Kandhari and Kandhari Pvt. Ltd. by Division Bench of this Court, this petition succeeds by holding that the commodities in question namely ADPE/PP tapes and ADPE/PP fabrics and HDPE/woven sacks for the period in question were rightly classified under Chapter 39 under different Sub Heads and are considered as inputs. Duty paid on such inputs is eligible for the modvat credit by the petitioner company.

Consequently, the impugned orders are set aside. No order as to costs.

[R.P. VYAS], J. **[RAJESH BALIA], J.**

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